

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAURA RAINE,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

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CIVIL ACTION No. 1-19-CV-231-RP

PLAINTIFF'S SHOWING OF CAUSE TO THE COURT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Laura Raine, and files this *Showing of Cause to the Court* in response to the Court's July 16, 2019 Order, and in support would respectfully show this Court the following:

I. Introduction and brief factual background.

1. On June 13, 2019, the Court stayed this case and ordered the Parties to file a status report (or dismissal papers) by July 13, 2019.

2. Plaintiff's counsel, Robert Melendez, attempted in good faith to make a filing as the Court requested. But when Mr. Melendez tried to log in to PACER, he was unable to do so. *See Affidavit of Robert Melendez*, attached as **Exhibit 1**. Mr. Melendez's former associate created the firm's log-in credentials for the PACER portal; when the associate left the firm, he gave Mr. Melendez the wrong credentials. *See id.*

3. When Mr. Melendez realized that the log-in credentials he had were incorrect, he tried to create new credentials in order to get access to PACER. *See id.* He chose the option to do so, and the website said that it sent an email to Mr. Melendez through which he could change his log-in password. *See id.* After several minutes of waiting for an email that never came, Mr. Melendez tried to reset his password again, but again received no email. *See id.*

4. Mr. Melendez realized at that point that he would need to work directly with someone from PACER to fix the issue. *See id.* After making contact with PACER, Mr. Melendez finally got the issue fixed on Monday, July 22. *See id.*

II. Plaintiff can show good cause.

5. “To establish good cause, a plaintiff has the burden of demonstrating ‘at least as much as would be required to show excusable neglect’” *Newby v. Enron Corp.*, 284 Fed. App’x 146, 149 (5th Cir. 2008) (quoting *Winters v. Teledyne Movable Offshore*, 776 F.2d 1304, 1306 (5th Cir. 1985)) (emphasis omitted). “Some showing of ‘good faith . . . and some reasonable basis for noncompliance’ is normally required.” *Winters*, 776 F.2d at 1306 (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (1969)).

6. Plaintiff can show good cause because she attempted to comply with the Court’s Order in good faith, and she has a reasonable basis for noncompliance. Plaintiff’s attorney Robert Melendez attempted to log into PACER in order to comply with the Court’s Order in good faith. But Mr. Melendez’s former associate gave Mr. Melendez the wrong log-in credentials before leaving the firm, and Mr. Melen-

dez had issues with the PACER website in trying to reset his password such that, even with direct communication with PACER personnel, the issue was only resolved on Monday, July 22.

Prayer.

Wherefore, premises considered, Plaintiff respectfully requests the Court find good cause on the part of Plaintiff in attempting to comply with the Court's June 13, 2019 Order in good faith and with a reasonable basis for noncompliance. Plaintiff further requests that the Court not dismiss her claims and that the Court grant Plaintiff all other relief, in law or equity, that Plaintiff is entitled to.

Respectfully Submitted,

MELENDEZ LAW FIRM, PLLC



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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of this document on all counsel of record by e-service on July 23, 2019.



Robert M. Melendez

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LAURA RAINE,

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CIVIL ACTION No. 1-19-CV-231-RP

AFFIDAVIT OF ROBERT M. MELENDEZ

STATE OF TEXAS

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COUNTY OF TRAVIS

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Today, Robert M. Melendez, a person whose identity I know, personally appeared before me, the undersigned notary. After I administered an oath to Mr. Melendez, he testified to the following:

1. "My name is Robert M. Melendez. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I attempted in good faith to make a filing in compliance with the Court's June 13, 2019 Order. But, when I went to make the filing, I was unable to log in to PACER because I did not have the correct log-in credentials.

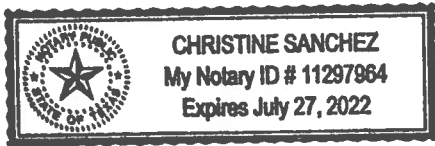
3. My former associate made the firm's PACER account and gave me the wrong log-in credentials when he left the firm. Because of this, I attempted to make a new password for my account. On the website, I chose the option to create a new password and waited for the resultant email. But that email never came, nor a second email when I tried to change my password a second time.

4. I had to contact PACER personnel directly in order to gain access to my account. The issue was finally resolved on Monday, July 22, 2019."

Affiant further sayeth naught.


Robert M. Melendez

Sworn to and subscribed before me on July 23, 2019.



Christine Sanchez

Notary Public in and for the State of Texas

My commission expires: 7/27/22